



**OFFICE OF THE ATTORNEY GENERAL**  
**STATE OF ILLINOIS**

**Jim Ryan**  
ATTORNEY GENERAL

January 31, 1996

FILE NO. 96-014

COUNTIES:

Liability for County Jail  
Prisoners' Medical Bills;  
Seizing of a County Jail  
Prisoner's Commissary Account  
to Reimburse County for  
Medical Expenses

Honorable Michael J. Kick  
State's Attorney, Kankakee County  
189 East Court Street, Suite 502  
Kankakee, Illinois 60901-3992

Honorable William E. Poncin  
State's Attorney, McDonough County  
Macomb, Illinois 61455

Gentlemen:

I have received two inquiries regarding the payment of medical expenses incurred on behalf of county jail prisoners. Specifically, Mr. Kick's predecessor has inquired whether a county is responsible for paying the medical expenses of a county jail prisoner who is hospitalized due to a preexisting medical condition. Mr. Poncin has asked whether the county board may authorize the county sheriff to seize money held in a county jail prisoner's commissary account as reimbursement to the county for medical expenses incurred on the prisoner's behalf. With respect

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to the first issue, it is my opinion that if the prisoner is in the county's custody, the county is responsible for the medical expenses incurred on behalf of the prisoner regardless of whether the medical services were required as a result of a preexisting medical condition. With respect to the second question, it is my opinion that although counties may seek reimbursement and initiate a civil action to recover costs of medical services, they do not possess the power to authorize a sheriff to seize a prisoner's commissary account to reimburse the county for medical expenses incurred on the prisoner's behalf.

Turning to the first inquiry, section 17 of the County Jail Act (730 ILCS 125/17 (West 1994)) provides, in pertinent part:

" The Warden of the jail shall furnish necessary bedding, clothing, fuel, and medical aid for all prisoners under his charge, and keep an accurate account of the same. When medical or hospital services are required by any person held in custody, the county, private hospital, physician or any public agency which provides such services shall be entitled to obtain reimbursement from the county for the cost of such services. \* \* \*

An arresting authority shall be responsible for any incurred medical expenses relating to the arrestee until such time as the arrestee is placed in the custody of the sheriff. However, the arresting authority shall not be so responsible if the arrest was made pursuant to a request by the sheriff.

For the purposes of this Section, "arresting authority" means a unit of local

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government, other than a county, which employs peace officers and whose peace officers have made the arrest of a person. For the purposes of this Section, "medical expenses relating to the arrestee" means only those expenses incurred for medical care or treatment provided to an arrestee on account of an injury suffered by the arrestee during the course of his arrest; the term does not include any expenses incurred for medical care or treatment provided to an arrestee on account of a health condition of the arrestee which existed prior to the time of his arrest." (Emphasis added.)

Under the language quoted above, it has long been established that counties are required to furnish necessary medical aid to prisoners in their custody. (County of LaSalle v. Milligan (1892), 143 Ill. 321, 334; Chicago Osteopathic Medical Ctrs. v. City of Chicago (1995), 271 Ill. App. 3d 165, 168.) A review of the pertinent statutes and case law indicates that neither the General Assembly nor the courts have defined the phrase "medical aid". The supreme court, however, has indicated that:

" \* \* \*

\* \* \* The sheriff, as keeper of the jail, was, \* \* \* required to furnish medical aid to all prisoners in his charge, and \* \* \* the county is required to pay for the same. What would be a proper keeping of a person in health would not be a proper keeping of the sick. If the proper keeping of a prisoner requires that he have medicine, it must be furnished; if his condition requires the attendance of a physician, one must be called; if he requires nursing or watching, his proper keeping demands that it shall be provided. The officer having the prisoner in

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charge, who, willfully or through gross negligence, should fail, in a proper case, to provide either, would be guilty of gross violation of his duty.

\* \* \*

"

(Emphasis added.) (County of LaSalle v. Milligan (1892), 143 Ill. at 334.)

Based upon the foregoing, it must be concluded that the county sheriff is under a duty to provide necessary medical aid to persons in his or her custody without regard to whether it is necessitated by a preexisting medical condition. Moreover, although subsequent provisions of section 17 of the Act relieve municipalities and other units of local government of the responsibility for an arrestee's medical expenses which result from a preexisting medical condition, counties are excluded from those provisions. Consequently, it is my opinion that counties are responsible for the payment of a county jail prisoner's necessary medical expenses regardless of the fact that the services may be related to a preexisting medical condition.

With respect to the issue of whether a county board may authorize the sheriff to seize monies held in a county jail prisoner's commissary account to reimburse the county for medical expenses incurred on behalf of the prisoner, section 20 of the County Jail Act (730 ILCS 125/20 (West 1994)) authorizes county boards to recover the expenses of keeping and maintaining prisoners:

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"The cost and expense of keeping, maintaining and furnishing the jail of each county, and keeping and maintaining the prisoner thereof, except as otherwise provided by law, shall be paid from the county treasury, the account therefor being first settled and allowed by the county board.

The county board may require convicted persons confined in its jail to reimburse the county for the expense incurred by their incarceration to the extent of their ability to pay for such expenses. The State's Attorney of the county in which such jail is located may, if requested by the County Board, institute civil actions in the circuit court of the county in which the jail is located to recover from such convicted confined persons the expenses incurred by their confinement. Such funds recovered shall be paid into the county treasury."  
(Emphasis added.)

Moreover, section 17 of the Act provides, in pertinent part:

" \* \* \* To the extent that \* \* \* [the prisoner] is reasonably able to pay for such care, including reimbursement from any insurance program or from other medical benefit programs available to such person, he or she shall reimburse the county or arresting authority. If such person has already been determined eligible for medical assistance under the Illinois Public Aid Code at the time the person is initially detained pending trial, the cost of such services, to the extent such cost exceeds \$2,500, shall be reimbursed by the Department of Public Aid under that Code. A reimbursement under any public or private program authorized by this Section shall be paid to the county or arresting authority to the same extent as would have been obtained had the services been rendered in a non-custodial environment.

\* \* \*

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Under the language of section 17, it is clear that counties are authorized to seek reimbursement for a county jail prisoner's medical expenses from the prisoner, from the prisoner's insurance carrier, from the Department of Public Aid, where appropriate, and from any other medical benefit program. In addition, under section 20 of the Act, the State's Attorney is authorized to bring a civil action to recover the expenses incurred as a result of a prisoner's confinement. A review of the pertinent statutes has failed to provide, however, any provision authorizing the seizure of a prisoner's commissary account for these purposes. It is well established that non-home-rule counties possess only those powers which are expressly granted to them by the constitution or by statute, together with those powers which are necessarily implied therefrom to effectuate the powers which have been expressly granted. (Redmond v. Novak (1981), 86 Ill. 2d 374, 382; Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 362.) Therefore, it is my opinion that a county board does not possess the power to authorize the county sheriff to seize the monies held in a prisoner's commissary account as reimbursement to the county for medical expenses incurred on a prisoner's behalf.

In closing, I would note that there is currently legislation pending before the General Assembly which could significantly affect the conclusions expressed herein. House

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Bill 1983, if enacted into law, would amend section 17 of the County Jail Act to relieve counties of the duty to "\* \* \* make any reimbursement for the cost of medical or hospital services provided to a prisoner on account of a health condition of the prisoner that existed prior to the time of the incarceration of the prisoner in jail.\* \* \*" House Bill 2171 would also amend section 17 of the County Jail Act to require that each person held in custody who requires nonemergency health care make a copayment in an amount established by the county board, to be "\* \* \* deducted from any existing balance in the person's account established to hold money for the person's use while in custody.\* \* \*" If either of these bills is passed and signed into law in its current form, the resolution of these inquiries would be significantly different.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Ryan". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

JAMES E. RYAN  
Attorney General